

The Gazette of India



EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 73] NEW DELHI, WEDNESDAY, MARCH 2, 1955

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 21st February 1955

S.R.O. 489.—Whereas the election of Shri Shamsher Singh as a member of the Legislative Assembly of the State of Pepsu, from the Maur Constituency has been called in question by an election petition duly presented under Part VI of the Representation of People Act, 1951 (XLIII of 1951), by Shri Bhupinder Singh Mann son of Shri Labh Singh of Village Bara, Teshsil Sirhind, District Patiala;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE ELECTION TRIBUNAL, BHATINDA

S. Bhupinder Singh Mann—*Petitioner.*

Versus

S. Shamsher Singh and others—*Respondents.*

Chhakan Lal—*Chairman.*

Kul Bhushan and G. M. Kekre—*Members.*

ELECTION PETITION NO. 22 OF 1954

PRESENT

S. Karam Singh for petitioner.

Shri Behari Lal for respondent No. 1.

ORDER

The petitioner and the respondents were candidates for election to the Pepsu Legislative Assembly held in 1954 from Maur Constituency. As a result of counting of votes which took place on 28th February 1954, the respondent No. 1 was declared to be duly elected from the said Constituency. S. Bhupinder Singh Mann the petitioner has made this petition u/s 81 of the Representation of Peoples Act 1951 calling in question the election of respondent No. 1 on the following grounds:—

(i) That the election as a result whereof respondent No. 1 has been returned has not been a free

corrupt practice of undue influence extensively prevailed at the election.

(ii) That the respondent No. 1 himself and through his agents committed the corrupt practice of obtaining and procuring the assistance for the furtherance of the prospects of the candidate's election from person serving under the Government of the state."

The detailed particulars and instances of corrupt practices alleged are set out in Part I of particulars on page 5 of the record and are to the following effect:—

"1. The respondent No. 1 appointed as his polling agent at the polling station Ghuman Kalan No. 20 one Harcharan Singh ~~W.P.~~ is a Lambardar of Ghuman Kalan. Certified copy of the appointment letter to the Returning Officer is attached herewith. Further instances will be supplied later on but before the hearing of the election petition begins".

On 18th October 1954, the counsel for the petitioner made a statement that the only allegation on which the petitioner sought to challenge the election of respondent No. 1 S. Shamsher Singh was the one given in part I of the list of particulars annexed to the petition, thus dropping the first ground given in para (4) of the petition.

2. The contesting respondent S. Shamsher Singh traversed all the pleas raised by the petitioner.

3. The following issues were framed:—

1. Whether respondent No. 1 himself or through his agents committed the corrupt practices of obtaining or procuring the assistance for the furtherance of the prospects of his election from a person serving under the Government of the State, as specified in part I of the list of particulars annexed to the petition. If so, what is its effect?

2. To what relief, if any, is the petitioner entitled? What orders, if any, have to be passed in this case u/s 98 and 99 of the Representation of Peoples Act 1951?

4. *Issue No. 1*—It is common ground between the parties that the respondent No. 1 appointed S. Harcharan Singh as his polling agent. It is also conceded that he was a Lambardar at the time of the polling. According to explanation (b) to clause (8) of Section 123 of the Peoples Representation Act a Lambardar (Head Man) is undoubtedly considered as a Government servant within the meaning of clause (8). In these circumstances the issue calling for determination is a very narrow one, namely whether Harcharan Singh the polling agent of the respondent No. 1 acted in such a manner as would bring the latter within the mischief of Section 123 clause (8). In this connection the petitioner produced 11 witnesses inclusive of himself. The only witnesses who have anything relevant to say about this matter are P.W. 3 to 11. All these witnesses stated generally that Harcharan Singh was canvassing the voters in furtherance of the prospect of the respondent No. 1's election. The witnesses cited a number of instances in point. Norata Ram P.W. 3 a business man of Mandi Maur stated that he was approached by Harcharan Singh and asked to vote for respondent No. 1. Karnail Singh P.W. 5 stated that Harcharan Singh asked him to canvass the support of his relation Kartar Singh on behalf of respondent No. 1. Similarly Lal Singh P.W. 6 gave evidence to the effect that Harcharan Singh and one of his relations Lubh Singh asked him and some other voters to support respondent No. 1 at the election. Jagir Singh P.W. 9. and Uttam Singh P.W. 10 also give evidence to a similar effect. Some of the witnesses also referred to another incident in which Harcharan Singh interfered with the election propaganda of the petitioner in the interests of respondent No. 1. They stated that the petitioner had convened a meeting of his supporters at village Ghuman Kalan and was making a speech when a party of the supporters of respondent No. 1 including Harcharan Singh arrived, created a pandemonium with the help of a loud-speaker with the result that the petitioner in order to avoid a breach of peace dispersed the meeting.

5. The respondent No. 1, on the other hand produced 29 witnesses including himself. The main burden of their song was that Harcharan Singh did not lend any support to respondent No. 1 nor created any disturbance at any of the election meetings organized by the petitioner.

6. After carefully considering the evidence before us we have arrived at the conclusion that the petitioner has failed to substantiate the allegation that respondent No. 1 procured the assistance for the furtherance of his prospects of

election from Harcharan Singh Lambardar. If the evidence of the petitioner is scrutinised critically it will not bear examination. Some of the witnesses are admittedly partisans of the petitioner and their evidence must be accepted at a heavy discount. To this category belong Uttam Singh P.W. 10 who is a member of the Akali party which set up the petitioner as a candidate, and Baldev Singh and Jagir Singh P.W. 7 and P.W. 9 who admittedly functioned as polling agents of the petitioner. Out of the other witnesses Karnail Singh P.W. 5 stated that he was not aware that Harcharan Singh did anything in connection with the election in furtherance of respondent No. 1 prospects. Baldev Singh P.W. 7 by implication denied that Harcharan Singh created any disturbance in any election meeting organized by the petitioner. Again according to Lal Singh P.W. 6 Harcharan Singh and Labh Singh (R.W.) approached him (Lal Singh P.W. 6) with a view to canvass support for Respondent No. 1. But in this respect Lal Singh P.W. 6 is contradicted by Labh Singh who has appeared as a witness on behalf of the respondent. Then, again according to Karnail Singh P.W. 5, he canvassed his relation Kartar Singh on behalf of respondent No. 1. But Kartar Singh has not been produced as a witness to corroborate his evidence. This leaves us only with the evidence of Norata Ram P.W. 3 which we consider hardly enough to warrant a finding in favour of the petitioner.

7. In support of his allegation that Harcharan Singh disturbed an election meeting held by him at Ghuman Kalan, the petitioner lodged the report Ex. PW11/1 at police station, Maur. But that report shows that petitioner's knowledge in regard to the presence of Harcharan Singh on the occasion is based on hear-say. This is what he says in the report, "I was informed later on that son of Shamsher Singh and Harcharan Singh Zaildar and Lambardar of Ghuman Kalan himself was leading and taking prominent part in the disturbance". It is true that in the witness box the petitioner categorically stated that Harcharan Singh was present and caused disturbance in his meeting. But that statement cannot be accepted in the face of an unequivocal recital in Ex. PW11/1 itself to the effect that the petitioner learnt from others that Harcharan Singh was present on the occasion. For these reasons we attach as little value to the report Ex. PW11/1 as to the petitioner's oral evidence.

8. There is another aspect of the matter. It will be seen from the averments contained in para 4 of the petition and the statement of particulars given in page 5 of the record that no reference was made to any alleged assistance given by Harcharan Singh to further the prospect of respondent No. 1 at the election. The petitioner challenged the election merely on the score of respondent No. 1 having appointed a Lambardar as his polling agent. If respondent No. 1 had really procured the assistance of Harcharan Singh in furthering his election prospects in the manner now alleged, there is hardly any reason why all reference to this fact should have been omitted both from the petition and the list of particulars. The fact that the story of assistance was sprung for the first time, only at the stage of evidence suggests that it was subsequently developed. And the explanation for this course of action is not far to seek. Until recently though the authorities on the subject were not unanimous the trend of the authority was in favour of the proposition that the mere fact that a Government servant acted as a polling agent of a candidate brought the letter within the mischief of section 123 clause 8. But their Lordships of the Supreme Court in a recent judgment reported as A.I.R. 1954 Supreme Court 587 have laid down that the appointment of a Government servant as a polling agent *per se* does not contravene section 123 clause 8. Their Lordships made the following observations in this connection:—

"There is nothing in the Act or in the rules barring the appointment of a Government servant as a Polling Agent. Such an appointment does not *per se* contravene section 123(8). Nor is there anything in the nature of the duties of a polling agent, which necessarily brings him within the prohibition enacted in that section. The duty of a polling agent is merely to identify the voters, and that could not by itself and without more be said to further the election prospects of the candidate. So long as the polling agent confines to his work as such agent of merely identifying the voters, it cannot be said that section 123(8) has, in any manner been infringed".

8. Their Lordships however added the following rider to the above dictum:—

"But if it is established that the presence of a Government servant of rank and importance as polling agent of one of the candidates has proved to be a source of unfair election practices and if it is made out that the candidate or his agent had abused the right to a point

a Government servant as polling agent by exploiting the situation for furthering his election prospects then the matter can be dealt with as an infringement of section 123(8)".

These observations were reiterated by their Lordships in another judgment in A.I.R. 1955 Supreme Court page 5 which was delivered in an application for review of their Lordships earlier judgment (in 1954 Supreme Court 587). These judgments were published after the framing of the issues. By raising the belated plea that Harcharan Singh furthered the election prospects of respondent No. 1, the petitioner did nothing more than to bring this case in a line with the views of the learned Judges of the Supreme Court. But this story which is clearly an after-thought cannot carry conviction.

9. Learned counsel for the petitioner, however, argued that the presence of Harcharan Singh Lambardar as a polling agent at the time of the election resulted in exploiting the situation in favour of the respondent No. 1 by reason of the influence which he wielded as a Lambardar, thus bringing the case within the purview of the rider in A.I.R. 1954 Supreme Court 587. We are unable to accept this contention. It is admitted before us that Harcharan Singh is a Lambardar of villages Ghuman Kalan and Ghuman Khurd. Therefore, at least he was capable of wielding influence in those villages only and no where else. It is clear from the daily report Ex. P 2, submitted by the Presidng Officer Ghuman Kalan Polling Station, where Harcharan Singh was working as a polling agent, that the total number of votes polled at that station was 849. It has been observed already that we are not prepared to accept the contention that Harcharan Singh in any way assisted respondent No. 1 in furthering his election prospects. But even if we accept the petitioners evidence at its face value, all that could be said in favour of the petitioner at the most is that Harcharan Singh could have influenced 849 voters who polled their votes from the villages of which he was the Lambardar. But it is clear from the result of election Ex. R 1, that respondent No. 1, beat the petitioner by a margin of 2623 votes. It cannot, therefore, be said with any show of reason that Harcharan Singh exploited the situation so as to turn the scales in favour of respondent No. 1 in the whole constituency. If as observed by their Lordships in A.I.R. 1954 Supreme Court 587 a Government servant of rank and importance had functioned as a polling agent of one of the candidates he might prove to be a source of unfair election practices. But the same could not be said of a mere Lambardar whose sphere of influence is very limited. We, therefore, unreservedly repel the contention of the learned counsel for the petitions that the presence of Harcharan Singh as polling agent for respondent No. 1 resulted in exploiting the situation in any way in favour of respondent No. 1.

10. It has been held in 2 E.L.R. 340 and numerous other authorities that the enquiry into corrupt practices under the law of election being of a quasi criminal character strict proof is to be demanded of the person bringing the charge to prove his case beyond reasonable doubt. In our judgment the evidence produced by the petitioner is wholly inadequate to prove the charge that Harcharan Singh Lambardar assisted the respondent No. 1 in furthering the latter's election. Accordingly we decide the issue against the petitioner.

Issue No. 2.—In view of our finding on issue No. 1 we hold that the petitioner is not entitled to any relief whatsoever.

11. In view of the above findings we hereby dismiss the petition with costs in favour of respondent No. 1. Counsel's fee: Rs. 250.

Announced to S. Maluk Singh Counsel for petitioner and Respondent No. 1.

The 12th February 1955.

(Sd.) CHHAKAN LAL, Chairman.

(Sd.) G. M. KEKRE, Member.

(Sd.) KUL BHUSHAN, Member.

[No. 82/22/54/2658.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy